Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM 1976

76-1050

NO. 76-

JEROME J. CAPLAN,

Petitioner,

v.

FRANK A. HOWARD, ET AL.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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MIAMI REVIEW — 371-4853 — 377-3721

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Jerome J. Caplan, seeks a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit which affirmed the District Court's order granting summary judgment to the Respondents.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit affirming the District Court's order granting summary judgment for the Respondents is an unreported opinion and appears in the Appendix, *infra*. It was entered on October 1, 1976.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on October 1, 1976. This Court has jurisdiction pursuant to 28 U.S.C. 1254 (1). This Petition for Writ of Certiorari is filed within 90 days of the judgment below. 28 U.S.C. 2101(c).

QUESTIONS PRESENTED

1. Does the nature of the Federal Union demand that Florida extend reciprocity to an out-of-state attorney, who has met standards equal to Florida's in his state of licensure?

2. Do Florida's denial of reciprocity to an out-of-state attorney and its requirement that he take and pass the Florida Bar examination, which has no relationship whatsoever to his ability to practice law in Florida, when he has met standards equal to those of Florida in the state of his licensure, deprive the attorney of his right to practice law in violation of the due process and equal protection clauses of the Fourteenth Amendment?

3. Do Florida's denial of reciprocity to an out-of-state attorney and its requirements that he take and pass

the Florida Bar examination, which has no relationship whatsoever to his ability to practice law in Florida, when he has met standards equal to those of Florida in the state of his licensure and Florida extends reciprocity to other professionals deprive the attorney of his right to practice law in violation of the equal protection clause of the Fourteenth Amendment?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, Section 1:

> ". . . Nor shall any state deprive any person of life, liberty, or property without due process of law . . ."
>
> ". . . Nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws . . ."

Section 1, Article I, Rules Relating to Admission to the Florida Bar:

> "All individuals who seek the privilege of practicing law in the State of Florida shall submit to the Bar Examination."

Florida statutes relating to reciprocity are included in the appendix to this petition.

STATEMENT OF THE CASE

The Petitioner filed suit against the Respondents and challenged the validity of Section 1 of Article I of the Rules Relating to Admission to the Florida Bar. The Petitioner is an American citizen, a member of the Bar of this Court, of the Maryland Bar*, of the Bar of the United States Court of Appeals for the Fifth Circuit and of the United States Court of Claims.

The Respondents are members of the Florida State Board of Bar Examiners and are charged with the responsibility of enforcing the rules relating to admission to the Florida Bar, with the responsibility of preparing, conducting and grading the Florida Bar Examination, and with the responsibility of accepting or rejecting applicants for membership in the Florida Bar.

The Petitioner sought a declaratory judgment declaring that the denial of reciprocity to him and the requirement that he take and pass the Florida Bar Examination was unconstitutional, illegal, null and void; a declaratory judgment declaring Section 1 of Article I of the Rules Relating to Admission to the Florida Bar unconstitutional, illegal, null and void as applied to the Petitioner; and an injunction requiring the Respondents to admit the Petitioner to membership in the Florida Bar.

The Petitioner consented to the Florida Bar's motion for leave to intervene.

*The standards for admission to the Maryland Bar are at least as high as those for admission to the Florida Bar.

Examination of the last six Florida Bar examinations, prior to the filing of the complaint, revealed the following: the 1974 third examination had only two questions realing with Florida law; one dealt with Florida constitutional law, the other dealt with the Florida Rules of Civil Procedure. The 1974 second examination was identical concerning Florida law. Questions on contracts, criminal law and procedure, evidence, real property and torts were tested under the Multistate Bar Examination. The 1974 first examination was identical both as to Florida law and the areas covered by the Multistate Bar Examination. The 1973 summer examination had one question on Florida constitutional law and one question on the Florida Rules of Civil Procedure. The 1973 spring examination had one question on the Florida Rules of Civil Procedure. Questions on contract, on criminal law and procedure, evidence, real property and torts were tested under the Multistate Bar Examination. The 1973 winter examination was identical.

In response to the Respondents' Motion for Summary Judgment, the Petitioner submitted, in effect, the affidavit of an expert which stated that he was prepared to testify that the Florida Bar Examination does not properly test the ability of an applicant to practice law in Florida, who has been admitted to practice law in another state.

The District Court granted the Respondents' Motion for Summary Judgment. The United States Court of Appeals for the Fifth Circuit summarily affirmed. This petition followed.

REASONS FOR GRANTING THE WRIT

I

THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH THE PRINCIPLES ENUNCIATED IN THIS COURT'S RECIPROCITY, DUE PROCESS, AND EQUAL PROTECTION DECISIONS.

In *Great Atlantic & Pac. Tea Co., Inc. v. Cottrell*, —— U.S. —— 96 S.Ct. 923 (1976), this Court invalidated a Mississippi regulation which provided that milk and milk products from another state could be sold in Mississippi only if the other state accepted milk and milk products produced and processed in Mississippi on a reciprocal basis. This Court held that even if this regulation enabled it to insure that the reciprocating state's health standards were as high as Mississippi's, there were less restrictive alternatives available, which were less burdensome on commerce, to serve this interest. 96 S.Ct. at 930. The doctrine of the "least restrictive alternative" to achieve governmental objectives was confirmed in *Cleveland Board of Education v. LaFleur*, 414 U.S. 634, 647 (1974).

Schware v. Board of Bar Examiners, 353 U.S. 232, 238-239 (1957), held that a state could not exclude anyone from the practice of law in violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment. The Respondents, rather than employing the least restrictive alternative, employed the most restrictive alternative, the Florida Bar Examination, to test the ability of an out-of-state attorney to practice law in Florida.

This requirement also creates an unconstitutional irrebuttable presumption that until an out-of-state attorney takes and passes the Florida Bar Examination, he is unfit to practice law in Florida. This Court has consistently invalidated permanent irrebuttable presumptions. *Vlandis v. Kline*, 412 U.S. 441 (1973); *Stanley v. Illinois*, 405 U.S. 642 (1972); *Cleveland Board of Education v. LaFleur*, *supra*.

Due process requires that an attorney who is licensed to practice law in another state must be given an opportunity to establish that a "less restrictive alternative" than the Florida Bar Examination should be utilized to determine his fitness to practice law in Florida. *Goldsmith v. United States Board of Tax Appeals*, 270 U.S. 117 (1926); *Grannis v. Ordeon*, 234 U.S. 385 (1914); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969).

Florida grants reciprocity to certified public accountants, to architects, to registered nurses, to osteopaths, to psychologists, to licensed practical nurses, and to veterinarians, upon a showing that they have met standards equal to Florida's in their state of licensure. Florida refuses to extend this opportunity to attorneys. This discrimination violates the equal protection clause, even under the "traditional" equal protection test. *Reed v. Reed*, 404 U.S. 71, 76 (1971); *Stanton v. Stanton*, 421 U.S. 7 (1975). Florida's denial of such an opportunity to attorneys while granting it to other professionals is inescapably contrary to the equal protection clause. *Stanley v. Illinois*, 405 U.S. at 658.

The circumstance that all persons who desire to practice law in Florida must take and pass the Florida Bar examination does not end the equal protection inquiry. Equal application of a law does not mean that it satisfies equal protection:

> "The Equal Protection clause requires more of a state law than non-discriminatory application within the class it establishes. . ." (*Rinaldi v. Yeager*, 384 U.S. 305, 308 (1966))

Thus, "Judicial inquiry under the Equal Protection clause . . . does not end with a showing of equal application among the members of the class defined by the legislation . . ." *McLaughlin v. Florida*, 379 U.S. 184, 191 (1964). Therefore, the ". . . manifest inadequacy of any approach requiring only equal application to the class defined in the statute . . ." *Id*, at 190, n.8, is apparent. If an attorney has met standards at least equal to Florida's in obtaining admission to the bar in his state of licensure, it is a violation of equal protection to require him to take and pass the Florida Bar examination, without first giving him an opportunity to establish that he need not take the examination. This is especially true when the Florida Bar examination covers primarily general law, utilizes the Multi-state Bar examination, and thus does not measure the attorney's knowledge of Florida law. Florida's purported attempt to protect the public through this requirement runs afoul of the equal protection clause. *Craig v. Boren*, ——U.S.——, 45 U.S.L.W. 4057, 4060 (1976).

II

THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA. IN *BERGER v. BOARD OF PSYCHOLOGIST EXAMINERS*, 521 F.2d 1056 (D.C. Cir. 1975)

In *Berger v. Board of Psychologist Examiners*, 521 F.2d 1056 (D.C. Cir. 1975), the Court held that a statutory irrebuttable presumption of professional incompetence, in the absence of a graduate degree in psychology, or a certain number of hours of graduate study in psychology, deprived a practicing psychologist of his right to practice psychology, without due process of law.

The psychologist was qualified, as is the Petitioner, to practice his profession, although he had never been certified or licensed to practice psychology in any other jurisdiction. The licensing authorities ignored the psychologist's qualifications and denied his application for licensure because of his failure to meet the threshold requirement.

The Court noted that ". . . in order to protect his 'liberty' and 'property' interests in his profession, appellant seeks an opportunity to rebut the statutory presumption of his incompetence." 521 F.2d at 1062.

The Court first quoted with approval from *Vlandis:*

> "The state's interest in administrative ease and certainty cannot, in and of itself, save the conclu-

sive presumption from invalidity under the due process clause where there are other reasonable and practicable means of establishing the pertinent facts on which the state's objective is premised." (521 F.2d at 1062)

The Court then held that:

"The principle of *Vlandis* is applicable to the facts of the instant case. A part, and presumably a significant part, of the D.C. licensing process is the administration pursuant to D.C. Code §2-481 of an examination devised by the licensing board to applicants holding a doctoral degree. No reason has been suggested why the board could not fashion a similar examination and substitute passage of that test for the current requirement of passing an examination plus holding a degree . . . on remand, following a declaration by this Court that the statute's irrebuttable presumption does not accord with principles clearly set forth in the case law, the Board could proceed to determine whether Berger's extensive clinical experience, coupled with his limited academic training and apprenticeship, have afforded him a professional competency equivalent to that of a doctor of psychology who has only two years of acceptable post-graduate experience." (521 F.2d at 1062-1063)

Thus:

". . . Whether an applicant previously engaged in the practice of psychology misses the statutory

standard by an inch or a country mile, he must be afforded a fair opportunity to demonstrate his professional skill according to reasonable standards before he is denied the right to continue his practice." (521 F.2d at 1063)

The Court required the Board to fashion an examination to comport with the psychologist's individual circumstance:

". . . we remand the case to . . . the licensing board to administer to Appellant Berger an examination designed to determine whether his professional skill is commensurate with that of new psychologists being currently licensed under the act. In so doing, we do not act as a legislature to add this requirement to the statute, but rather strike down as unconstitutional that part of the statute which requires an applicant to have an academic credential as well as a certain number of years experience in order to qualify to take a license examination. Only by this action can we remedy the constitutional defect of the statute as it is applied to Berger and to other psychologists without the requisite academic credentials but possibly possessed of the necessary skills." (521 F.2d at 1064).

Berger and this case are irreconcilable. This Court should grant certiorari to resolve the conflict.

III

THE DECISION BELOW PRESENTS AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, RESOLVED BY THIS COURT.

This Court has never before decided whether an attorney who has been admitted to practice law in one state has the Federal constitutional right to the opportunity to establish that the standards that he met in this state of licensure are equal to the standards of the state in which he seeks admission, thus relieving him of the requirement that he take and pass the second state's Bar examination.

This Court, not the court below, should make that decision.

CONCLUSION

For the above stated reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Petition for Writ of Certiorari have been sent to C. Graham Carothers, Esq., P. O. Box 391, Tallahassee, Florida 32302 and to Reginald L. Williams, Esq., 9th Floor, Dade Federal Building, Miami, Florida 33132 on 12/29/76.

LOUIS M. JEPEWAY, JR.

LOUIS M. JEPEWAY, JR.

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-1090

Summary Calendar*

JEROME J. CAPLAN,
Plaintiff-Appellant,

versus

FRANK A. HOWARD, JR., ET AL.,
Defendants-Appellees.

Appeal for the United States District Court for the
Southern District of Florida

(October 1, 1976)

Before GODBOLD, DYER and HILL, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

---

*Rule 18, 5 Cir., Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

[1]See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.

FLORIDA RECIPROCITY STATUTES

CERTIFIED PUBLIC ACCOUNTANTS

Florida statute 473.19, renumbered to Florida Statute 423.201 in 1969. Certificates Granted to Holders From Other States.

The Board may, in its discretion, issue a certificate as a certified public accountant to any applicant who holds a valid and unrevoked certificate as a certified public accountant issued by, or under the authority of, another state or political subdivision of the United States, or who holds a valid and unrevoked certificate as a chartered accountant issued by, or under the authority of, a foreign country; provided, the applicant has complied with the provisions of this chapter and the rules of the Board. Board shall not be required to issue any certificate under the provisions of this section unless:

(1) The original certificate was secured as the result of an examination which in the judgment of the Board was the equivalent of the standard established by it, and,

(2) The applicant has been engaged in the practice of public accountancy in Florida as a full-time employee of a certified public accountant, as defined in this chapter, for a period of two years, and is a resident, having resided continuously in the state for a period of two years, and,

(3) The state or country issuing the original certificate grant similar privileges to persons holding certificates as certified public accountants issued under the laws of this state, and

(4) The Board is otherwise fully satisfied as to the moral and technical fitness of the applicant.

ARCHITECTS

Florida Statute 467.11. Admission Without Examination.

Hereafter no person shall be admitted to the practice of architecture in this state without an examination except that a certificate of registration may be issued upon filing of application and payment of the same fees as if qualified by examination to a person who meets the requirements of applicants for examination as set forth in §467.08 and has passed a standard examination and holds a current certificate issued by the National Council of Architectural Registration Board and who furnishes satisfactory evidence of continued honorable professional practice after the passing of such examination together with satisfactory evidence of his present ability and integrity. However, applicants who are registered to practice architecture in another state prior to July 1, 1970 shall not be required to hold a professional degree as defined in §467.08(1)(b)5.

REGISTERED NURSES

Florida Statute 464.071. Registered Professional Nurse; License.

* * *

(2) The Board shall issue a license to practice professional nursing without examination, to an applicant who has been duly licensed or registered under the laws of another jurisdiction, if in the opinion of the Board the applicant meets the same standards for licensure required of registered professional nurses in this state . . .

OSTEOPATHS

Florida Statute 459.11. Board May Issue License Without Examination In Certain Instances.

(1) The State Board of Osteopathic Medical Examiners may issue a license without examination to an osteopathic physician who is a graduate of a standard college of osteopathy and who has passed an examination for admission into the medical corps of the United States Army, the United States Navy, or the United States Public Health Service; or who has passed all parts of the examination conducted by the National Board of Examiners for Osteopathic Physicians and Surgeons; provided:

(a) The applicant is of good moral character;

(b) The requirement to practice in the state, territory, country or province in which the applicant is already licensed be equal to those of this state.

(2) The Board shall not issue a license without examination except as hereinbefore in this section provided.

PSYCHOLOGISTS

Florida Statute 490.22. Licensing Under Special Conditions.

* * *

(2) The Board may waive the examination for applicants who present proof of current certification or license in a state which has standards at least equal to those for licensure in Florida and such applicants are entitled to receive a license and a license certificate upon payment of the fees provided for in §490.18.

LICENSED PRACTICAL NURSES

Florida Statute 464.121. License to Practical Nurse; License.

* * *

(2) The Board may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed practical nurse or a person entitled to perform similar services under a different title, under the laws of another jurisdiction, if, in the opinion of the Board the applicant meets the requirements for licensed practical nurse in this state . . .

VETERINARIANS

Florida Statute 474.141. License by Endorsement; Requirements; Void Unless Used.

(1) Subject to the provisions herein contained, the Board shall issue a license by endorsement to practice veterinarian medicine in this state to an appli-

cant who submits a sworn application in proper form, together with a fee of $50, demonstrating that he:

* * *

(e) Is licensed to practice veterinarian medicine in a state that will permit veterinarians licensed in the State of Florida to receive a license by endorsement to practice veterinary medicine in that state . . .

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE
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FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, issued October 1, 1976, summarily affirmed the order of the United States District Court for the Southern District of Florida converting Respondent's Motion to Dismiss into Motion for Summary Judgment, which is found at Appendix, pp. 1a-5a.

JURISDICTION

The opinion from which this appeal was taken was issued by the Fifth Circuit on October 1, 1976. The Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. 1254(1).

QUESTION PRESENTED FOR REVIEW

Does the United States Constitution require a state to admit without examination an applicant to its bar solely because he has been admitted to the bar of another state?

STATEMENT OF THE CASE

The jurisdiction of the district court was invoked because Petitioner alleged that Article I, Section 1, of the Revised 1974 Rules of the Supreme Court of Florida Relating to Admissions to the Bar (hereinafter referred to as Rules) was in violation of the full faith and credit clause, the equal protection and due process clauses of the United States Constitution, and of Petitioner's right to travel. In October, 1974, Petitioner, having never applied for admission to the Florida Bar, filed suit against Respondents, members of the Florida Board of Bar Examiners, challenging the constitutionality of Article I, Section 1, of the Rules, which required all applicants to the Florida Bar to take the Florida Bar Examination. (Appendix, p. 6a) In the past, this examination has tested an applicant's competence in the specific areas of Florida constitutional law and Florida civil procedure and in other general areas of law. (Appendix, pp. 8a-9a)

Recently, the Florida Board of Bar Examiners has implemented an additional Florida section to the examination testing an applicant's knowledge in Florida criminal procedure. (Appendix, pp. 9a-10a) Petitioner, who was admitted to the Maryland Bar in 1959, alleged that the requirement that he take the Florida Bar Examination was unconstitutional both on its face and as applied to him. He sought a declaratory judgment to that effect, as well as an injunction requiring the Respondents to admit Petitioner to the Florida Bar.

But Petitioner's attack on Article I, Section 1 of the Rules is spurious. Even if Petitioner had succeeded in the court below in obtaining a judgment declaring the bar examination requirement unconstitutional, he would not have qualified for admission to the Florida Bar and, indeed, has never applied for admission. (Appendix, p. 16a) Article IV, Section 22(b) of the Rules requires that an applicant be a graduate of a full-time law school, one that was accredited by either the American Bar Association or the American Association of Law Schools at the time of his graduation. (Appendix, pp. 6a-8a) Petitioner's Juris Doctor degree was awarded by the University of Baltimore Law School, which was not accredited at the time of his graduation. (Appendix, pp. 18a-21a) In lieu of a degree from an accredited law school, Section 22(b) provides that attorneys in good standing in their home bar may substitute ten years of practice for the degree requirement. However, Petitioner also fails to fulfill this alternative requirement, for since his admission to the Maryland Bar in 1959, he has not practiced law. (Appendix, pp. 21a-22a) Instead, he has worked in the

Appellate Division of the IRS in a position which does not require that he be admitted to a state bar. (Appendix, pp. 21a-22a)

After Petitioner filed his complaint, the Florida Bar filed a motion for leave to intervene, to which Petitioner consented. The Respondents then filed a Motion to Dismiss which the District Court for the Southern District of Florida, treating it as a Motion for Summary Judgment, granted. On appeal the United States Court of Appeals for the Fifth Circuit summarily affirmed. Petitioner subsequently filed a Petition for Writ of Certiorari in the Supreme Court, to which this brief is in response.

REASONS FOR DENYING THE WRIT

It is well-settled law that the individual states have a compelling interest in the regulation of the practice of law within their boundaries and, thus, have broad powers to establish standards for admission into the legal profession. *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792, reh. den. 423 U.S. 886 (1975). The power to regulate the admission of persons to the Florida Bar was delegated to the Supreme Court of Florida by the people of Florida. Florida Constitution, Article V, Section 15. It was pursuant to this power that the Supreme Court of Florida promulgated the rule to which Petitioner takes offense — Article I, Section 1, of the Rules, requiring all applicants to the Florida Bar to take the bar examination. Numerous courts have firmly rejected claims similar to Petitioner's that simply because a person has been admitted to the bar of one state he has a right to be admitted to the bar of another

state. *Application of Wasserman*, 240 F.2d 213 (9th Cir. 1956), *Brown v. Supreme Court of Virginia*, 359 F.Supp. 549 (E.D. Vir., 1973) aff'd. 414 U.S. 1034, reh. den. 414 U.S. 1138 (1974), *In re Russell*, 236 So.2d 767 (Fla. 1970), *In re Petition of Avery*, 358 P.2d 709 (Ha. 1961). Addressing the constitutional issues of such a claim, the Ninth Circuit responded that "[t]he constitutional points which are attempted to be raised are so inconsequential and evanescent that the Court need not consider them. . . ." *Application of Wasserman, supra* at 214. Therefore, Petitioner's allegation that such denial of reciprocity is in derogation of the equal protection and due process clauses must fail.

Equal Protection

It is clear that Florida's rule that all applicants for admission to the bar take the Florida Bar Examination is not a violation of the equal protection clause of the Fourteenth Amendment. The fact that Florida grants reciprocity to some professionals but not to lawyers does not violate equal protection. *Ferguson v. Skrupa*, 372 U.S. 726 (1963). Nor does the fact that a bar admission rule may result in "incidental individual inequality" make that rule violative of the Fourteenth Amendment. *Martin v. Walton*, 368 U.S. 25 (1961), *Whitfield v. Illinois Board of Law Examiners*, 504 F.2d 474 (7th Cir. 1974).

In the case at hand, there is at issue neither a suspect classification nor a fundamental right. Florida requires all bar applicants to take the bar examination. Article I, Section 1, Rules. There is no constitutional right to practice law. *In re Lockwood*, 154 U.S. 116 (1894), *Bradwell v. Illinois*, 16 Wall. 130 (1873), *In re*

Bogart, 386 F.Supp. 126 (S.D.N.Y. 1974). Thus, there can be no mistake that the applicable equal protection test is the traditional rational basis test. It dictates that "a legislative classification must be sustained unless it is 'patently arbitrary' and bears no rational relationship to a legitimate government interest." *Frontiero v. Richardson*, 411 U.S. 677, 683 (1973). At issue, then, is whether the rule requiring Florida bar applicants to take the bar examination has any rational relationship to a legitimate state interest. This Court has already recognized that a state has a legitimate interest in regulating the bar. *Goldfarb v. Virginia Board of Bar Examiners, supra.* Numerous other courts have recognized that a written bar examination has a rational relationship to the determination of an applicant's qualifications for practicing law. *Tyler v. Vickery*, 517 F.2d 1089 (5th Cir. 1975), cert. den. ___ U.S. ___, 49 L.Ed.2d 393 (1976). *Whitfield v. Illinois Board of Law Examiners*, 504 F.2d 474 (7th Cir. 1974), *Hawkins v. Moss*, 503 F.2d 1171 (4th Cir. 1974), cert. den. 420 U.S. 928 (1975).

Florida's bar examination for the last few years has tested applicants in the specific areas of Florida Constitutional Law and Florida Civil Procedure, as well as areas of general law. (Appendix, pp. 8a-9a) Recently a section testing an applicant's knowledge in Florida Criminal Procedure has been added. (Appendix, pp. 9a-10a) No other states' bar examinations test upon Florida law, thus no other state can measure the competence of a bar applicant in those areas. It taxes the imagination to maintain that the Florida Bar Examination is not rationally related to its purpose of ensuring that members of its bar are competent to practice law in Florida.

Due Process

Petitioners claim that the due process is violated by the requirement that he take the Florida Bar Examination before being admitted to the bar is without merit. It is well established that a state has the right to require an applicant to be proficient in its law before it admits him to the bar. *Schware v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957). This Court has held that an examination of an applicant to a profession by a board of examiners does not run contrary to due process guarantees. *Douglas v. Noble*, 261 U.S. 165 (1923).

"[T]he touchstone of due process is protection of the individual against arbitrary action of the government." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), *Dent v. West Virginia*, 129 U.S. 114 (1889). There is nothing arbitrary in the rule that all individuals desiring to practice law in Florida prove their competence by taking the bar examination. *Id.* Such rule embodies no irrebuttable presumption of an applicant's degree of competency. It simply requires an applicant to the Florida Bar to bear the burden of proving his competence by taking the bar examination.

Petitioner's attempt to assert that due process demands the doctrine of "least restrictive alternative" be applied to this case is contrary to well-settled principals of constitutional law. *Schware v. Board of Bar Examiners, supra, Douglass v. Noble, supra.* He bases this contention upon *Great Atlantic and Pacific Tea Co., Inc. v. Cottrell*, ___ U.S. ___, 96 S.Ct. 923 (1976). Yet *Cottrell* is totally inapplicable; it

speaks specifically to cases in which the federal government's regulatory powers under the Commerce Clause clash with a state government's exercise of the police power. Clearly, there is no such clash of interests in the instant case. The opportunity to prove his competence through the Florida Bar Examination fully satisfies due process requirements. *Douglas v. Noble, supra.*

Conflict With Berger Decision

Petitioner's contention that the Fifth Circuit's affirmation of the District Court's order granting summary judgment conflicts with *Berger v. Board of Psychologist Examiners*, 521 F.2d 1056 (D.C. Cir. 1975) is frivolous. In *Berger* the court found violative of due process a section of a newly enacted law which for the first time regulated psychologists. The offensive section prohibited practicing psychologists without specified academic credentials from continuing in their practice, and it denied them any opportunity to prove their competence. The *Berger* court found the plaintiff's liberty and property rights had been established during the pre-regulatory period when he had actively been practicing his profession. To take away these firmly established rights without opportunity to be heard violated due process. However, the court found the same academic requirements valid as applied to psychologists who had not established a practice.

In the instant case Petitioner has no established liberty and property rights in the practice of law, for he has not been practicing it. Thus, *Berger* is inapplicable. No new regulation is snatching from Petitioner his very means of livelihood; nor is there a denial of opportunity to prove his competence. Petitioner may continue at his same job doing the same thing he has been doing. If he desires to practice law, then he may avail himself of the opportunity to prove his competence by taking the Florida Bar Examination.

CONCLUSION

Petitioner's claims were rightly rejected by the court below. There are no substantial federal questions to merit this Court's attention. Nor is there a conflict of decisions between the circuit courts which would require this Court's resolution.

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

C. GRAHAM CAROTHERS
Post Office Box 391
Tallahassee, Florida 32302
(904) 224-9115

ATTORNEY FOR
RESPONDENTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Brief for Respondents in Opposition to the Petition for Writ of Certiorari have been served by mail upon Louis M. Jepeway, Jr., Esquire, 619 Dade Federal Building, Miami, Florida 33131, on this ____ day of February, 1977.

C. GRAHAM CAROTHERS

APPENDIX

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SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 74-1282-Civ-CA

JEROME J. CAPLAN and
ROBERT G. McCLYMONDS,
Plaintiffs,

versus

FRANK A. HOWARD, JR., et al.,
Defendants.

This case presents a challenge to Article I, Section 1 of the Revised 1974 Rules of the Supreme Court of Florida Relating to Admissions to the Bar (Rules). This section requires that "All individuals who seek the privilege of practicing law in the State of Florida shall submit to the bar examination." The examination is written and is administered tri-annually by Defendants, The Florida Board of Bar Examiners.

Plaintiff Caplan, is a resident of Florida and a member of the bar of the State of Maryland who wishes to become a member of the Florida Bar. Plaintiff McClymonds, is a member of the Florida Bar who desires to become a member of the North Carolina Bar. They assert that Florida may not require out-of-state attorneys to establish their competency to practice

law in Florida by means of a written bar examination. This they allege violates the right to travel of foreign attorneys and also violates their right to due process of law and equal protection contrary to Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States.

Plaintiffs seek a declaration that Article I, Section 1 of the Rules is unconstitutional and request an injunction requiring Defendants to immediately grant reciprocity to members of the North Carolina Bar and to admit Plaintiff Caplan to the Florida Bar. This relief is sought under 42 U.S.C. Section 1983 and jurisdiction is properly laid under 28 U.S.C. Section 1343. Because of its interest in the subject matter of this case, the Florida Bar upon motion was allowed to intervene on the side of Defendants.

Defendants responded to the Complaint with a Motion to Dismiss under Federal Rules of Civil Procedure 12 for Plaintiffs' failure to state a claim on which relief can be granted. *Sua sponte* the Court converted Defendant's Motion to Dismiss into a Motion for Summary Judgment. There being no material fact in issue,[1] the Court concludes as follows:

There is no constitutional barrier to Florida's requirement that all bar applicants take a written examination. "It is undisputed that a State has a constitutionally permissible and substantial interest in determining whether an applicant possesses the

1 By stipulation of the parties, the Court has considered and treated the Plaintiffs' response to Court's Order, dated July 8, 1975, as the affidavit of the expert mentioned in the said response.

'character and general fitness requisite for an attorney and counselor-at-law.' " *In Re Application of Griffiths*, 413 U.S. 117, 722-723 (1973). Citing *Law Student's Research Council v. Wadmond*, 401 U.S. 154, 159 (1971), see also *In Re Application of Stolar*, 401 U.S. 23, 29 (1971), see also *Konigsberg v. State Bar*, 366 U.S. 36, 40-41 (1961), *Schware v. Board of Bar Examiners*, 353 U.S. 232, 239 (1957).

The fact that in 1959 Plaintiff Caplan was admitted to the Maryland Bar says nothing about his ability to measure up to Florida's criteria for lawyer competency and good moral character. Florida's requirement that he meet its standards does not deny his right to interstate travel. The Rules have no residency requirement. See *Brown v. Supreme Court of Virginia*, 359 F. Supp. 549 (E.D. Va. 1973) aff'd., 414 U.S. 1034 (1974); *Aronson v. Ambrose*, 366 F. Supp. 37 (D. of Vir. Isls. 1972) aff'd., 479 F.2d 75 (3rd Cir. 1973) cert. den. 414 U.S. 854 (1973) and *Suffling v. Bondurant*, 339 F. Supp. 257 (D.N.Mex. 1972) aff'd. *sub nom Rose v. Bondurant*, 409 U.S. 1020 (1972), where reasonable residency requirements for bar admissions are upheld. All of these cases properly relied on *Martin v. Walton*, 368 U.S. 25 (1961). If reasonable residency requirements are acceptable in the bar admissions process without interfering with the applicant's right to interstate travel, then a *fortiori* Florida's Rules with no residency requirement place no impermissible burden on the applicant's freedom of movement.

Without exception, each applicant must pass the Florida examination before admission to the Florida Bar. On this requirement Plaintiffs' equal protection

claim must founder. The only classification created by the Rules is between those who demonstrate their legal competency to Florida's satisfaction, and those who have not so demonstrated their ability on a Florida examination. Plaintiffs demand that Florida treat all persons who have passed any bar examination whatsoever alike with those who have passed the Florida examination. This goes beyond the Fourteenth Amendment. "The Constitution does not require things which are different in fact . . . to be treated as though they were the same." *Renaldi v. Yeager*, 384 U.S. 305, 309 (1966).

As stated by Mr. Justice Burger:

> "The Equal Protection clause of that amendment [the Fourteenth] does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Royster Guano Co. v. Virginia, 253 US 412, 415 (1920)' " *Reed v. Reed*, 404 U.S. 71, 75-76 (1971)

The rational relationship of bar examinations to their purpose of determining an applicant's competency to practice law is well recognized. *Tyler v. Vickery*, 517 F.2d 1089 et seq. (5th Cir. 1975); *Whitfield*

v. Illinois Board of Law Examiners, 504 F.2d 474 (7th Cir. 1974); and *Hawkins v. Moss*, 503 F.2d 1171 (4th Cir. 1974). As stated by Circuit Judge Russell in *Hawkins:*

> "It thus matters not what examinations the applicant has undergone in states where he is presently licensed; he is still compelled to satisfy reasonable standards for competency and character as fixed by the new state in which he seeks the right to practice unless, under some provision of that state's court rules or statutes, those requirements are excused or dispensed with." *Id.* at 1176

For the foregoing reasons it is hereby ORDERED and ADJUDGED that:

1. Defendant's motion to dismiss which was converted into a motion for summary judgment is granted, and

2. Plaintiffs' complaint is dismissed with prejudice and at Plaintiffs' cost.

DONE AND ORDERED at Miami, Florida, on this the 2 day of December, 1975.

C. CLYDE ATKINS
UNITED STATES DISTRICT
JUDGE

REVISED 1974
RULES
of the
SUPREME COURT
of
FLORIDA

Relating to
Admissions to the Bar
Effective April 17, 1974

ARTICLE I

FLORIDA BOARD OF BAR EXAMINERS

Section 1. The admission of attorneys to the practice of the profession of law is a judicial function. All individuals who seek the privilege of practicing law in the State of Florida shall submit to the bar examination. The Court promulgates the rules hereinafter set forth and adopts and approves the Code of Recommended Standards of Bar Examiners, adopted by the American Bar Association on May 21, 1958, promulgated and approved by the National Conference of Bar Examiners and the Association of American Law Schools, except where such standards are inconsistent with the rules of this Court or the rules of the Board hereinafter established.

ARTICLE IV

EDUCATIONAL, CHARACTER AND FITNESS REQUIREMENTS

Section 22. No applicant shall be admitted to the bar examination unless he or she furnishes to the Board:

* * *

(b) Satisfactory evidence of graduation from a full-time accredited law school at a time when or in the same calendar year in which such school was so accredited, or in the alternative, satisfactory evidence that the applicant has completed the requirements for graduation from a full-time accredited law school at a time when, or in the same calendar year in which such school was so accredited, and that such accredited law school has, or in the alternative, will confer upon the applicant the degree of Bachelor of Laws or Doctor of Jurisprudence. The term, "accredited law school," has reference to any law school approved or provisionally approved by the American Bar Association or which is a member of the Association of American Law Schools. None of the following shall be substituted for law school training:

1. Private study, correspondence school or law office training;

2. Age or experience;

3. Waived or lowered standards of legal training for particular persons or groups.

(Attorneys who were in good standing, upon producing such evidence as the Board may require, that such applicant was in the practice of law in the District of

Columbia or in other States of the United States of America, or in practice in federal courts in territories, possessions or protectorates of the United States for at least ten years, and that he was in good standing at the bar of the District of Columbia, the territory, possession or protectorate, or of the State from which he came; may notwithstanding the provisions of Sections 22(a) and 22(b) hereof, be permitted to take the bar examination to be admitted to the practice of law in Florida upon furnishing alternative data in compliance with the following section.)

AFFIDAVIT

(Number and Title Omitted)

STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME the undersigned authority this day personally appeared JAMES B. TIPPIN, JR., who after being duly sworn, deposes and says that:

1. He is the Executive Director of the Florida Board of Bar Examiners and by virtue of this position is charged with executing and implementing the Rules of the Supreme Court of Florida Relating to Admissions to the Bar; the Rules and Regulations of the Florida Board of Bar Examiners; and the policies and directives of the Florida Board of Bar Examiners.

2. The Supreme Court of Florida has provided in Article II, Section 10(c) of the Revised 1974 Rules of the

Supreme Court of Florida Relating to Admissions to the Bar that each Florida Bar Examination examine applicants on the following subjects:

a. Contracts
b. Constitutional Law
   1. Federal
   2. State
c. Wills and Administration of Estates
d. Trusts
e. Criminal Law and Procedure
f. Corporations
g. Real Property
h. Evidence
i. Torts
j. Florida Rules of Civil Procedure

Attached in support of this Affidavit and made a part hereto as Exhibit "A" is a copy of the Revised 1974 Rules of the Florida Supreme Court and of the Florida Board of Bar Examiners now in effect. Also attached in support of this Affidavit and made a part hereto as Exhibit "B" is a copy of the Revised 1975 Rules of the Florida Supreme Court and of the Board of Bar Examiners which become effective on November 11, 1975. Article II, Section 10(c) of the 1975 Rules provides that the following subjects may be used in future Florida Bar Examinations:

a. Florida Constitutional Law
b. Federal Constitutional Law

c. Wills and Administration of Estates

d. Trusts

e. Florida Rules of Civil and Criminal Procedure

3. Pursuant to the Rules of the Supreme Court currently in effect, the Florida Bar Examination does examine applicants' knowledge of Florida law, including but not limited to, Florida Constitutional Law and the Florida Rules of Civil Procedure. See Defendants' Response to Plaintiffs' Request for Production of Documents, Response No. 1.

4. Pursuant to the requirements of the Revised 1975 Rules, the Florida Bar Examination will examine the applicants' knowledge of Florida law, including but not limited to, Florida Constitutional Law, the Florida Rules of Civil Procedure and the Florida Rules of Criminal Procedure.

Further the Affiant saith not.

/s/ JAMES B. TIPPIN, JR.
JAMES B. TIPPIN, JR.
Executive Director of the
Florida Board of Bar Examiners

Sworn to and Subscribed before
me this 17th day of July, 1975.

/s/ JUDY HELMS
NOTARY PUBLIC
State of Florida at Large
My Commission Expires: 11-13-78

REQUEST FOR ADMISSIONS

(Number and Title Omitted)

The Plaintiffs, JEROME J. CAPLAN and ROBERT C. McCLYMONDS, pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, request the following admissions from the Defendants, FRANK A. HOWARD, JR., EDWARD A. STERN, PAUL B. ANTON, PARKS M. CARMICHAEL, VICTOR M. CAWTHON, J. NIXON DANIEL, JR., JOSEPH J. GERSTEN, EARL M. JOHNSON, LESTER I. LEVIN, DELPHENE STRICKLAND, RUTH FLEET THURMAN, BILL WAGNER and JOHN GERMANY, and from the Intervener, The Florida Bar:

1. The Plaintiff, Caplan, is an American citizen, a member of the Bar of the State of Maryland since 1959, a member of the Bar of the United States Supreme Court, a member of the Bar of the United States Court of Appeals for the Fifth Circuit, and a member of the Bar of the United States Court of Claims.

2. The Plaintiff, Caplan, has served as the acting Assistant Chief and as Acting Chief of the Appellate Branch Office of the Internal Revenue Service in Miami, Florida, and is presently employed as Appellate Conferee in the Appellate Division of the Internal Revenue in Miami, Florida.

3. The Plaintiff, Caplan, meets all the requirements for membership in the Florida Bar except that he has not taken the Florida Bar Examination.

4. The standards for admission to the Bar of the State of Maryland are at least as high as those relating to admission to the Bar of the State of Florida.

5. The Plaintiff, McClymonds, is an American citizen, a member of the Florida Bar, a graduate of the Wake Forest School of Law, located in Winston-Salem, North Carolina, and meets all the requirements of the Bar for membership in the Bar of the State of North Carolina.

6. The Defendants are members of the Florida State Board of Bar Examiners and are charged with the responsibility of enforcing the rules relating to admission to the Florida Bar, with the responsibility of preparing, conducting and grading the Florida Bar examination, and with the responsibility of accepting or rejecting applicants for membership in the Florida Bar.

7. As a prerequisite to admission to the Florida Bar, all applicants must take and pass the Florida Bar examination.

8. The Florida Bar examination is composed of questions dealing with general law in several subject areas, and of questions taken from the multi-state bar examination question, which multi-state bar examination questions are identical to those given at the same time in the bar examinations of Maryland, North Carolina, and most, if not all, of the fifty states.

9. The Florida Bar examination does not cover Florida law per se.

10. The Florida Bar examination has no greater efficacy in establishing an applicant's fitness to practice law in the State of Florida than does the Maryland Bar examination, if an applicant has already been admitted to the Maryland Bar.

11. The Defendants do not employ any method other than the Florida Bar examination to establish the fitness to practice law in Florida of an attorney previously licensed to practice in Maryland or in any other state.

12. The State of Florida extends reciprocity to Certified Public Accountants who have taken and passed the Certified Public Accountant examination in other states.

13. The Plaintiff, Caplan, desires to become a member of the Florida Bar. However, the Defendants will not admit him to membership in the Florida Bar until he takes and passes the Florida Bar examination.

14. The Plaintiff, McClymonds, desires to become a member of the North Carolina Bar. North Carolina extends reciprocity to members of the bar associations of all states which extend reciprocity to members of the North Carolina Bar. The Plaintiff, McClymonds, is precluded from becoming a member of the North Carolina Bar without taking and passing the North Carolina Bar examination since the Defendants do not extend reciprocity to members of the North Carolina Bar.

Respectfully submitted,

JEPEWAY, GASSEN &
JEPEWAY
Attorneys for Plaintiffs
619 Dade Federal Building
Miami, Florida 33131
/s/ Louis M. Jepeway, Jr.
Louis M. Jepeway, Jr.

DEFENDANTS' ANSWERS TO PLAINTIFFS' REQUESTS FOR ADMISSIONS SERVED JANUARY 24, 1975

(Number and Title Omitted)

Defendants, FRANK A. HOWARD, JR., EDWARD A. STERN, PAUL B. ANTON, PARKS M. CARMICHAEL, VICTOR M. CAWTHON, J. NIXON DANIEL, JR., JOSEPH H. GERSTEN, EARL M. JOHNSON, LESTER I. LEVINE, DELPHENE STRICKLAND, RUTH FLEET THURMAN, BILL WAGNER and JOHN GERMANY, pursuant to Federal Rules of Civil Procedure 36(a) answer Plaintiffs' Requests as follows in paragraphs numbered to correspond to each numbered request:

1. Admit.

2. Admit.

3. Deny.

4. Deny.

5. Admit, except that portion of the request which states, "and meets all the requirements of the Bar for membership in the Bar of the State of North Carolina." Only the Board of Law Examiners of North Carolina can determine Plaintiff McClymonds' fitness for admission to the Bar of North Carolina.

6. Admit, except that portion of the request which states, "and with the responsibility of accepting or rejecting applicants for membership in The Florida Bar," which is hereby denied.

7. Admit, subject to the Supreme Court of Florida's recognition of the qualification of certain people who meet the standards of Chapter 10175, *Laws of Florida* (1925 as amended by Chapter 26655, *Laws of Florida* (1951) and who may be admitted without an examination provided they meet all the other requirements for admission.

8. Admit that the Florida Bar Examination consists in part of questions concerning general law and that it contains questions taken from the multi-state bar examination on the First and Second Triannual Florida Bar Examination, but the Florida Bar Examination also tests and contains questions directed to Florida law. Rules of the Supreme Court of Florida Relating to Admissions to The Bar, Article II, Section 10(c) and Rule III, Section 20(c).

Defendants admit that on July 30, 1974, 39 states, including Maryland and North Carolina, and three jurisdictions (Virgin Islands, Samoa and the District of Columbia) used questions from the same multi-state bar examination.

9. Deny.

10. Deny.

11. Deny.

12. Admit that, subject to the provisions of Section 473.210, *Florida Statutes*, accountants certified to practice in states other than Florida may be certified to practice in Florida without taking the Florida written accountant's examination.

13. As Plaintiff Caplan has not made application for admission to The Florida Bar as required by Rule I, Rules and Regulations of the Florida Board of Bar Examiners, Defendants have no knowledge of his desire.

Defendants admit that until Plaintiff Caplan demonstrates his good moral character, his fitness to perform the obligations of an attorney and passes the Florida Bar Examination, they will not recommend him to the Florida Supreme Court for admission to The Florida Bar.

14. Defendants have no means to determine the desire of Plaintiff McClymonds. Defendants admit that subject to all the limitations of the applicable rules of the Board of Law Examiners of North

Carolina, Plaintiff McClymonds could become a member of the North Carolina Bar without a written bar examination if Florida extended a similar privilege to members of the North Carolina Bar.

DATED this 3 day of February, 1975.

/s/ C. GRAHAM CAROTHERS
C. GRAHAM CAROTHERS
Post Office Box 391
Tallahassee, Florida 32302

Attorney for Defendants.

FIRST SET OF INTERROGATORIES TO PLAINTIFF CAPLAN

(Number and Title Omitted)

Defendants, FRANK A. HOWARD, JR., EDWARD A. STERN, PAUL B. ANTON, PARKS M. CARMICHAEL, VICTOR M. CAWTHON, J. NIXON DANIEL, JR., JOSEPH H. GERSTEN, EARL M. JOHNSON, LESTER I. LEVINE, DELPHENE STRICKLAND, RUTH FLEET THURMAN, BILL WAGNER and JOHN GERMANY, pursuant to Federal Rules of Civil Procedure 33 propound the following interrogatories to Plaintiff Jerome J. Caplan:

1. List all the colleges and universities you have attended, the dates of attendance and the degrees, if any, granted.

2. List all the law schools you have attended, the dates of attendance and the degrees, if any, granted.

3. At the time of your attendance or during your year of graduation were any of the foregoing law schools approved by the American Bar Association or the American Association of Law Schools. If so, give the dates of approval and the name of the approving organization.

4. Please name all jurisdiction and courts, state and federal in which you have been admitted to practice law and give dates of admission.

5. Please state in which, if any, of the above jurisdictions you were required to appear before any board or committee or other examining authority for examination or inquiry about any matter, other than examination on legal subjects in connection with your application for admission to practice law and give the name and address of any such authority.

6. Please state the name and address of courts before which your actual practice of law was chiefly conducted.

7. Have you been continuously entitled to practice before all the courts listed in response to question 4 from your date of admission to their bars until now?

8. If not, please explain the cause and circumstances for your failing to be able to practice in that jurisdiction.

9. Have you ever been disbarred?

10. Have you ever been suspended from practice?

11. Have you ever been reprimanded, censured or otherwise disciplined by any court, bar, or bar association?

12. Make a complete list of your practice of law since first being admitted to practice law in any jurisdiction or court. Include temporary or part-time work. Please state as to each employment or period of private practice:

a. The periods during which you were employed as an attorney or engaged in private practice with the applicable dates.

b. The nature and extent of practice for each employment or period of private practice.

Indicate which of the foregoing positions of employment could be performed only by members of a state bar.

13. Have you ever taken and passed a bar examination in Maryland or elsewhere which contained questions from the multi-state bar examination? If so, give the date and location of each such examination.

14. Have you ever taken and passed any bar examination which tested your knowledge of Florida law? If so, give the date and location of each such examination.

C. GRAHAM CAROTHERS
Post Office Box 391
Tallahassee, Florida 32202

Attorney for Defendants.

ANSWER TO DEFENDANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF CAPLAN

(Number and Title Omitted)

The Plaintiff, JEROME J. CAPLAN, for Answer to the First Set of Interrogatories propounded to him by the Defendants, says:

1. University of Baltimore, Baltimore, Maryland. September 1938 to June 1942. Received Certificate in Accounting, June, 1942.

2. University of Baltimore Law School, September 1956 to June 1959. LL.B, June 1959. J.D. retroactive to June 11, 1959.

3. No, but it was provisionally accredited on August 17, 1972 by the American Bar Association.

4. a) Maryland Bar and Court of Appeals of Maryland, October 23, 1959.

b) Supreme Bench of Baltimore City, November 6, 1959.

c) United States District Court for the District of Maryland, November 20, 1959.

d) United States Tax Court, October 1, 1965.

e) United States Supreme Court, April 3, 1972.

f) United States Court of Claims, March 9, 1973.

g) United States Court of Appeals for the Fifth Circuit, September 26, 1974.

5. Maryland State Board of Law Examiners, Court of Appeals Building, Annapolis, Maryland, April 1957.

6. Since my admission to the Maryland Bar in 1959, I have been continuously employed with the Appellate Division of the IRS. Conditions of my employment prohibit private practice. I am not directly involved in the active trial of my cases, except on rare occasions. My work is geared toward settlement of tax cases. If the case is not settled, my work is utilized by the attorney trying the case.

7. Yes.

8. Not applicable.

9. No

10. No

11. No

12. Since my admission to the Maryland Bar in 1959, I have been continuously employed with the Appellate Division of the Internal Revenue Service, as follows:

In Baltimore, Maryland, until February 1961.

In Miami, Florida from February 1961 to date. I was a GS-13 Appellate Conferee until January 10, 1960 when I was promoted to Appellate Conferee, GS-14. The journeyman grade for Appellate Conferees is GS-13.

My work primarily involved the negotiated settlement of disputed income, estate and gift tax cases with proposed tax liabilities ranging upward to several million dollars.

A copy of the official Job Description for Appellate Conferee, GS-14, which details my duties, is attached. State Bar membership is not a requirement for the position of Appellate Conferee.

13. No

14. No

/s/ JEROME J. CAPLAN
JEROME J. CAPLAN

Sworn to and subscribed before me this 10 day of March, 1975.

/s/ RUTH LIDER
NOTARY PUBLIC,
State of Florida at Large

NOTARY PUBLIC,
STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES MAY 24, 1976
BONDED THRU GENERAL INSURANCE UNDERWRITERS